

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
3 OAKLAND DIVISION
4

5 WELLS FARGO BANK, N.A., as
6 TRUSTEE FOR THE CLARA POPPIC
7 TRUST,

8 Plaintiff,

9 vs.

10 KENNETH G. RENZ, et al.,

11 Defendants.
12

13 AND RELATED ACTIONS.
14

Case No: C 08-02561-SBA

ORDER TO SHOW CAUSE

Dkt. 266

15 This action arises primarily under the federal Comprehensive Environmental Response,
16 Compensation, and Liability Act ("CERCLA"). Plaintiff Wells Fargo Bank N.A. ("Plaintiff")
17 brings claims under CERCLA and related statutes, as well as common law tort claims, against
18 several defendants, including Defendant Nan Y. Park ("Park").

19 Plaintiff filed its Complaint on May 21, 2008. Park did not appear, and the Clerk
20 therefore entered default against her on August 11, 2008. On October 31, 2008, Park, who at
21 the time was represented by counsel, and Plaintiff filed a Stipulation and Request for an Order
22 Setting Aside Default Entered Against Nan Young Park. Dkt. 101. On November 4, 2008, the
23 Court set aside Park's Default. Dkt. 104. On November 21, 2008, Park filed her Answer to
24 Plaintiff's Second Amended Complaint, which includes the following counterclaims against
25 Plaintiff: (1) Contribution (CERCLA § 113(f)); (2) Contribution (HSAA); (3) Equitable
26 Contribution and Indemnity; (4) Negligence; (5) Breach of Contract; and (6) Declaratory
27 Relief. Dkt. 110.

28 On February 26, 2010, Park filed a Notice of Substitution of Counsel, in which she
indicated that she would be proceeding pro se in place of her current counsel. Dkt. 234. On

1 March 3, 2010, Park's counsel filed a Motion for Leave to Withdraw as Counsel of Nan Y.
2 Park, which the Court granted on June 21, 2010. Dkts. 236, 255. In its June 21, 2010 Order,
3 the Court advised Park as follows:

4 Ms. Park should be aware that although she is now representing herself in this
5 action, she nevertheless is obligated to follow the same rules as represented
6 parties. See King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987) (finding that pro
7 per litigants must follow the same procedural rules as represented parties). Self-
8 representation is not an excuse for non-compliance with court rules. See
9 Swimmer v. I.R.S., 811 F.3d 1342, 1344 (9th Cir. 1987) (“[i]gnorance of court
10 rules does not constitute excusable neglect, even if the litigant appears pro se.”)
(citation omitted). It is Ms. Park's responsibility to defend against the
complaint. ... Failure to comply with any of these requirements may result in
the imposition of sanctions, up to and including the entry of a judgment against
her.

11 Dkt. 255 at 2.

12 Now, Plaintiff moves, under Federal Rule of Civil Procedure 41(b), to dismiss Park's
13 counterclaims against it and to strike the entirety of Park's Answer. Dkt. 266. Plaintiff's
14 motion is set for hearing on January 11, 2011. In its motion, Plaintiff asserts that dismissal is
15 warranted on the grounds that Park, since the withdrawal of her counsel, has failed to
16 participate in this litigation by defending against Plaintiff's claims or prosecuting her
17 counterclaims against Plaintiff. In particular, Plaintiff asserts that Park did not participate in
18 the mediation session held on September 23, 2010. Dkt. 266-1; Culver Decl. ¶ 4. Plaintiff
19 further asserts that Park failed to attend the August 19, 2010 deposition of Defendant Kazuko
20 Umstead or the October 7-8, 2010 deposition of Plaintiff's Person Most Knowledgeable. Id. ¶¶
21 5-6. Moreover, the Court notes that pursuant to Civil Local Rule 7-3(a), any opposition or
22 statement of non-opposition to Plaintiff's motion was due by December 21, 2010, which is
23 twenty-one days prior to the January 11, 2011 hearing date. To date, Park has not filed an
24 opposition or a statement of non-opposition to Plaintiff's motion.

25 The Ninth Circuit has held that the failure to file an opposition to a motion to dismiss is
26 grounds for granting the motion. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995);
27 Fed.R.Civ.P. 41(b). Furthermore, the failure to comply with the Federal Rules of Civil
28 Procedure or any order of the court is grounds for dismissal of this action under Federal Rule of

1 Civil Procedure 41(b). Ferdick v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir. 1992).

2 Accordingly,

3 IT IS HEREBY ORDERED THAT:

4 1. Within fifteen (15) days from the date this Order is filed, Park shall file a
5 memorandum to show cause as to why her counterclaims should not be dismissed and her
6 Answer should not be stricken for lack of prosecution under Rule 41(b). The memorandum
7 shall set forth the nature of the cause, its present status, the reason it has not been brought to
8 trial or otherwise terminated, any basis for opposing dismissal, and the expected course of the
9 case if it is not dismissed.

10 2. Park is expressly advised that should she fail to file a timely memorandum in
11 response to this Order, the Court will grant Plaintiff's motion to dismiss without further notice.

12 IT IS SO ORDERED.

13 Dated: January 11, 2011


14 SAUNDRA BROWN ARMSTRONG
15 United States District Judge
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1 UNITED STATES DISTRICT COURT
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4 WELLS FARGO BANK N.A. et al,

5 Plaintiff,

6 v.

7 RENZ et al,

8 Defendant.
9 _____/

10 Case Number: CV08-02561 SBA

11 **CERTIFICATE OF SERVICE**

12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
13 Court, Northern District of California.

14 That on January 11, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said
15 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
16 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
17 located in the Clerk's office.

18 Guan Huang
19 2683 22nd Street
20 San Francisco, CA 94110

21 Nan Y. Park
22 8306 Wilshire Boulevard
23 Suite 560
24 Beverly Hills, CA 90211

25 Won Jae Yi
26 2565 Telegraph Avenue
27 Berkeley, CA 94704

28 Dated: January 11, 2011

Richard W. Wieking, Clerk

By: LISA R CLARK, Deputy Clerk

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